
(2012) 02 SC CK 0082

In the Supreme Court Of India

Case No : Interlocutory Application No. 6 in Writ Petition (Civil) No. 318 of 2006 and Contempt Petition (C) No"s. 41, 42, 43 and 44 of 2011 in WP (C) No. 318 of 2006

National Campaign Committee for Central Legislation on
Construction Labour

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 — Section 24, 25, 26, 27, 60

Citation : (2012) 3 BomCR 70 : (2012) 114 CLT 86 : (2012) 133 FLR 10 :
(2012) 2 JCR 1 : (2012) 2 LLJ 545 : (2012) 2 SCALE 359 : (2012) 2 SLJ 471

Hon'ble Judges : S.H. Kapadia, C.J.;Swatanter Kumar, J;A.K. Patnaik, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. This order is in continuation to the all the previous orders passed by this Court, more particularly, the orders dated 18th January, 2011, 15th March, 2011, 25th April, 2011 and 28th November, 2011. Vide Order dated 15th March, 2011, this Court -dealt with Contempt Petition Nos. 41 - 44 of 2011 filed by the petitioner and passed certain directions including that the Labour Secretary of the concerned States should be present in the Court on the next date of hearing. Thereafter, vide Order dated 25th April, 2011, the States of Nagaland, Rajasthan, Meghalaya, Uttar Pradesh, Maharashtra, Goa and Uttarakhand, Union Territories of Lakshadweep and Chandigarh and Union of India were required to comply with certain directions as well as to file affidavits of compliance.

2. The Petitioner in Contempt Petition Nos. 41 - 44 of 2011 had contended that most of the states have not complied with the directions issued by this Court. They had failed to discharge their statutory duties under the provisions of the Building & Other Construction Worker (Regulations of Employment & Conditions of Service) Act, 1996 (for short, 'the Act') and the Building and Other

Construction Workers Welfare Cess Act, 1996 (for short 'the Cess Act'), thus, they should be punished for violating the orders of this Court. However, after passing of the above orders, most of the states have filed affidavits, showing status of compliance with the directions issued by this Court as well as performance of their statutory duties.

3. In view of the persistent defaults and unacceptable conduct of the officers of the concerned states, we passed the following order on 28th November, 2011:

Since almost every State is in contempt, we have no option but to take further steps in the matter. However, in order to give opportunity to the States, the matter is being adjourned to the last week of December, 2011, to enable each defaulting State to file its reply as to why contempt action should not be taken against the concerned officers.

4. Still, a few States have neither filed affidavits nor have they placed on record any documentation to demonstrate that they have fully complied with the directions of this Court and have completely discharged their statutory obligations under the provisions of the Act. Keeping in view the fact that, despite our order dated 28th November, 2011, these states have failed to show obedience to the orders of this Court, the matter was again placed before this Court on 16th December, 2011, on which date we had reserved the contempt petitions for orders.

Category - I -

5. Under Category-I, we will be dealing with the States of Andhra Pradesh, Chhattisgarh, Punjab and Tamil Nadu. All these states had filed their respective affidavits in the years 2010 and 2009 respectively. Thereafter, they have not even cared to file further affidavits as directed by the orders of this Court. Though, all the above States have constituted Welfare Boards, have registered workers and establishments in accordance with the provisions of the Act, notified the prescribed authorities for collection and disbursement of cess under the Cess Act and have collected some cess, however, they have not collected the required quantum of cess and have also not distributed the amount to the registered applicants in furtherance to implementation of the scheme framed. The Petitioner has also placed on record material to show that these states are defaulting in this regard. Before we take any action against the officers responsible for enforcing the schemes and proper collection and disbursement of cess, we would grant a last and final opportunity to these states to file affidavits of compliance within four weeks from today, subject to payment of Rs. 10,000/- each, as costs. The cost shall be payable to the Supreme Court Legal Services Committee.

Category - II

6. Under Category-II, we would pass directions in relation to the states which have constituted Welfare Boards, notified the statutory authorities responsible and have even collected the cess, however, they have not disbursed the cess

amounts to the registered applicants for the reason that the competent authority in the State Government has not approved the welfare schemes or the welfare fund has not been constituted. Another reason for such nondisbursal of cess amount is that no applicants have approached the Welfare Board/notified authority, for payment under the provisions of the Act and the Cess Act.

7. The States of Andhra Pradesh, Arunachal Pradesh, Goa, Jammu and Kashmir, Meghalaya, Maharashtra, Mizoram, Nagaland, Punjab, Sikkim and Tamil Nadu and Union Territories of Andaman and Nicobar, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep fall under this category.

8. Having perused the affidavits of these states/union territories and the records before us, we issue the following directions:

a) The governments of the above-referred states/union territories are hereby directed to ensure that the welfare fund is created and welfare schemes are formulated and notified in accordance with the provisions of the Act and the Cess Act within four weeks from today.

b) The welfare schemes framed by the respective states/union territories shall be given due publicity and be brought to the notice of the concerned workmen and eligible applicants by the District Authority/Sub-Committee responsible. We may clarify that there are certain schemes where the workmen are entitled to disbursement of the amounts across-the-board, like education schemes, etc. Every effort should be made to implement these schemes without any further delay.

c) Affidavit shall be filed by the Secretary (Labour) of the respective states/union territories within six weeks from today reporting to this Court the complete compliance with these directions. The affidavit shall also give the up-to-date status -

d) of collection of cess, disbursement of amounts and implementation of schemes.

Category-III

9. The States of Kerala, Punjab, Nagaland and Himachal Pradesh and the Union Territory of Lakshadweep are the states/union territory which have not given any details of the schemes framed, reasons for its non-implementation and consequent nondisbursement of the cess amounts. It is a statutory obligation upon these states/union territory and the authorities in-charge of the concerned departments that they ensure implementation of the schemes and disbursement of the cess amounts. Let now the schemes be publicized and cess amounts be disbursed to the eligible applicants in accordance with the provisions of the Act and the Cess Act within a period of six weeks from today and affidavit of compliance of the Secretary (Labour) of the states/union territory be filed within two weeks thereafter.

General Directions

10. It is clear from the affidavits filed on behalf of most of the states and union territories that they are not holding meetings of the Welfare Board as required, i.e., at least once in two months, to discharge their statutory functions. Further, it is also apparent that audit by the Comptroller and Auditor General (CAG) has not been conducted of the funds placed at the disposal of the concerned authority. We may also notice that large funds are lying with the said Welfare Boards/authorities, but have not been disbursed. The possibility of these amounts being diverted by the state authority for other heads of expenditure in the respective states/union territories cannot be ruled out.

11. Resultantly, while reiterating our earlier orders, we also issue the following directions for their immediate compliance:

a) All the State Welfare Boards shall be subjected to audit by the CAG within two months from today. All the States, Union Territories and the State Boards to initiate the process and ensure its completion under the provisions of Section 27 of the Act.

b) Every Welfare Board shall, without fail, hold its meetings at least once in two months and submit its Minutes, as well as the action taken and progress reports in regard to the framing and implementation of the schemes and disbursement of funds to the eligible applicants, to the Secretary (Labour) of that Government quarterly.

c) The funds available with the Welfare Boards which have not been disbursed or are not likely to be disbursed within a short period should be properly invested with the nationalized banks only. Funds available with the Welfare Boards shall not be utilized by the State for any other head of expenditure of the State Government, etc.

d) Union of India has filed an affidavit. It is stated in the affidavit that they have taken various steps, including steps for amendment of the Act and the Rules framed thereunder. Union of India is directed to expedite this process. We also direct the Union of India to discharge its various statutory functions under the Act with particular reference to Sections 24 to 27. It shall also issue appropriate directions u/s 60 of the Act to all the State Governments to fully implement the provisions of the Act as well as the Cess Act.

12. The above directions should be complied with by all concerned without fail and within the time afore-stipulated. We make it clear that in the event of any default committed by any officer/official/authority, we will be compelled to take action against the officer/official/authority concerned under the provisions of the Contempt of Courts Act, 1971 without any further notice.

13. With these directions, we dispose of these four contempt petitions & I.A.6, but make it clear that in the event of default, the Petitioner would be at liberty to file fresh contempt petitions before this Court, in view of the above order.

14. Let a copy of this order be sent to each Chief Secretary and Secretary (Labour) of the respective states or union territories.